Contra, *Matter of Hobson*, 61 Hun (N. Y.) 504. The law is the same where rents are collected by the executor. *McPike* v. *McPike*, 111 Mo. 216. In the case considered, since the shares were acquired by the testator's fraud, the proceeds of their sale should be held by the executrix on a constructive trust. *American Sugar Refining Co.* v. *Fancher*, 145 N. Y. 552. Clearly, then, the shares and their proceeds, which were incapable of being received by the executrix in her official capacity, cannot be regarded as assets. *Campbell* v. *Sacray*, *supra*. The decision, which would make the determination of what are assets depend on their treatment by the executor, is therefore difficult to support or reconcile with authority.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT OF SET-OFF AGAINST LEGATEES OR HEIRS. — The defendant was a beneficiary under the will of A and the residuary legatee under that of B. A debt due from B to A was barred by the Statute of Limitations. The trustees of A's estate took out a summons to determine the question of the defendant's liability to the estate. *Held*, that the defendant need not bring into account the amount of the debt as against his share of the testator's estate. *In re Bruce*, [1908] 2 Ch. 682 (Ct. App., Oct. 27, 1908).

For a discussion of this case in a lower court, see 22 HARV. L. REV. 143.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — WAIVER OF STATUTE OF LIMITATIONS BY INTERESTED EXECUTOR. — A promissory note was barred by the Statute of Limitations before the maker's death. One of his executors, who was also one of the payee's heirs-at-law, made a payment as executor on account of the note. The payee's administrator brought a bill in equity to recover the amount of the note, to which the maker's other executor pleaded the statute. *Held*, that the note is barred. *Haskell* v. *Manson*, 39 Banker and Tradesman 264 (Mass. Sup. Jud. Ct., Jan. 7, 1909).

Many of those jurisdictions which allow an executor to waive the Statute of Limitations extend the rule so as to make a waiver by one co-executor binding upon the others. *Shreve* v. *Joyce*, 36 N. J. L. 44; *contra*, *Pitts* v. *Wooten's Executors*, 24 Ala. 474. Assuming that this extension is adopted, it is at least questionable whether it should be carried further so as to apply to claims in which the executor has an interest. An executor may waive the statute as to his own claims against the testator that were not barred at the time of the latter's death. *Preston* v. *Cutter*, 64 N. H. 461. As to those that were then barred, it has been said that the executor steps into the testator's place and so can revive claims held by him in his individual capacity. *Baker* v. *Bush*, 25 Ga. 594. But it is submitted that the executor steps into his testator's place solely for the purpose of protecting the estate. His duty being to use his discretion as to what barred claims are well founded and just, there is an obvious practical objection to allowing him this discretion in regard to a claim in which he is personally interested. *Batson* v. *Murrell*, 10 Humph. (Tenn.) 301; *Hoch's Appeal*, 21 Pa. St. 280.

GENERAL AVERAGE — NATURE, CAUSE, AND MANNER OF SACRIFICE — EFFECT OF INHERENT VICE OF CARGO UPON THE RIGHT TO CONTRIBUTION. — Y & Co. shipped coal upon G & Co.'s vessel. The cargo ignited by spontaneous combustion, whereupon water was poured into the hold, damaging the unburned coal. In respect to this damage Y & Co. claimed a general average contribution from G & Co. *Held*, that, in the absence of negligence on their part, Y & Co. are entitled to contribution. *Greenshields, Cowie & Co.* v. *Stephens & Sons*, [1908] A. C. 431.

A cargo of garbage tankage took fire by spontaneous combustion. The whole cargo of garbage tankage was destroyed in putting out the fire. The plaintiff insurance company had to indemnify the cargo owner and sued the vessel for a general average contribution. *Held*, that the plaintiff is entitled to contribution. *Atlantic Mutual Insurance Co.* v. *Schooner W. J. Quillan*, 40 N. Y. L. J. 2073 (U. S. Dist. Ct., S. D. N. Y., Jan. 1909).

The English case affirms the decision of the lower court discussed in 21 HARV. L. REV. 369. The question is now raised for the first time in this country by the New York case, which, in the consequent absence of authority, expressly defers to the above ruling by the House of Lords.

GIFTS — GIFTS INTER VIVOS — BANK ACCOUNT: INTENT TO MAKE PRESENT GIFT. — A deposited a sum of money in a savings bank and the following entry was made in the pass book: "A in case of death payable to B." A delivered the pass book to B and subsequently died. The bank filed a bill of interpleader, and B's claim of the deposit was denied on the ground that there had been no valid gift. *Held*, that there is not a valid gift to B. *Jones* v. *Crisp*, 71 Atl. 515 (Md.).

X deposited money in a savings bank in her own name. She lost her pass book, but obtained from the bank an order transferring the account to Y, which she indorsed and delivered to Y, stating that she gave this fund "subject to her own use during her lifetime." *Held*, that there is a valid gift to Y. *Candee* v. *Conn. Savings Bank*, 71 Atl. 551 (Conn.).

It is clearly settled law that a valid gift either *inter vivos* or *causa mortis* of a deposit in a savings bank may be made by a delivery of the pass book. *Camp's Appeal*, 36 Conn. 88; *Ridden* v. *Thrall*, 125 N. Y. 572. But there must be a clear intention on the part of the donor to relinquish immediately to the donee all control over the fund. *Bath Savings Institution* v. *Fogg*, 101 Me. 188. Thus, where A had a deposit put in the names of A and B, there was held to be no gift, since A would retain control during his life. *Schippers* v. *Kempkes*, 67 Atl. 74 (N. J.). The decision in the first case under consideration that there was no gift is therefore clearly correct, since, by the express terms of the deposit, B was to get no rights until A's death. And as a testamentary disposition such a gift is invalid under the statute of wills. *Augusta Savings Bank* v. *Fogg*, 82 Me. 538. But in the second case there was no attempt to make a testamentary disposition, and the reservation of a use for life, while it may presumptively, does not conclusively, negative an intent to make an absolute gift *in praesenti*. *Bone* v. *Holmes*, 195 Mass. 495.

GUARDIAN AND WARD — OPPOSITION OF WARD NO BAR TO ACTION BY GUARDIAN. — An infant sold personal property to the defendant. His guardian, against the infant's wishes, brought suit to recover possession of the property. *Held*, that the ward's opposition is no defense to the action. *Hughes* v. *Murphy*, 63 S. E. 231 (Ga., Ct. of App., Dec. 22, 1908).

The courts differ as to the guardian's right to his ward's real estate, some holding that he is entitled to the possession, others that he can only have the rents and profits. *Matter of Hynes*, 105 N. Y. 560; *Muller* v. *Benner*, 69 Ill. 108. But in most states either by statute or by common law he is entitled to the possession of his ward's personalty. *Walker* v. *Watson*, 32 Ga. 264. At common law an infant could only sue by next friend, but many statutes allow the guardian to sue without an appointment by the court as next friend. *Hutton* v. *Williams*, 35 Ala. 503. It follows that he can bring action for the possession of the ward's personal property. *Boruff* v. *Stipp*, 126 Ind. 32. A new promise by the guardian will revive a debt of his ward barred by the Statute of Limitations, when a promise by the ward will have no effect. *Manson* v. *Felton*, 30 Mass. 206. And a conveyance by the ward is no defense to an action for possession by the guardian. *Freeman* v. *Bradford*, 5 Port. (Ala.) 270. Since the reason for appointing a guardian is to substitute the discretion of an adult for that of an infant, the principal case seems rightly decided.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO SOMETHING ILLEGAL OR IMMORAL — ACTION FOR GOODS SOLD IN FURTHERANCE OF AN ILLEGAL AGREEMENT. — The plaintiff corporation was formed in violation of the anti-trust laws, and made an unlawful agreement with the defendant to sell it all the paper required by defendant at specified prices. Accordingly,